

EXHIBIT J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
UNITED STATES OF AMERICA, : Docket #10m2424
: 1:10-mj-02424-UA
Plaintiff, :
- against - :
YVES BENHAMOU, : New York, New York
: November 17, 2010
Defendant. :
----- :

PROCEEDINGS BEFORE
MAGISTRATE JUDGE FRANK MAAS,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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None

E X H I B I T S

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None

1 THE CLERK: United States of America against Yves
2 Benhamou. Counsel, state your names for the record.

3 MR. PABLO QUINONES: Good afternoon, Your Honor,
4 Pablo Quinones on behalf of the United States. With me is
5 Special Agent Mike Howard with the FBI.

6 THE COURT: Good morning.

7 MR. DAVID ZORNOW: Good morning, Your Honor, David
8 Zornow with Skadden Arps Slate Meagher & Flom. I'm joined
9 today by my partner Steven Glaser on behalf of Dr. Yves
10 Benhamou.

11 THE COURT: Good morning. This matter is on for a
12 detention hearing. I read the Pre-Trial Services report, and
13 I was a little delayed because I reading your letter, Mr.
14 Zornow and some of the attachments. The one thing I haven't
15 read - give me just a moment to skim it - is the complaint.

16 (Pause in Proceeding)

17 THE COURT: I haven't read all of it, but I get the
18 gist of it. Mr. Quinones, tell me why I should continue to
19 have the defendant be detained.

20 MR. QUINONES: Good morning, Your Honor. I know
21 you've read defense counsel's letter and the complaint, and
22 let me sort of put it in perspective. The Government is
23 seeking detention. It is not seeking detention based on
24 dangerousness on the community. It's seeking detention based
25 on risk of flight. Our burden is under preponderance of the

1 evidence, and we do not think that there are any conditions
2 that the Court could set that would reasonably assure his
3 appearance in this case. We're not asking for any guarantees,
4 but we don't there are any reasonable conditions that could be
5 set.

6 And let me start by referring to some of what's in
7 defense counsel's letter. It sort of juxtaposes a notion that
8 we are solely seeking detention because the defendant is a
9 French national and his country will not extradite him. I
10 don't think that's the case. That's not the sole reason we're
11 seeking detention. And it also seems to suggest that they're
12 seeking his bail solely because he is a doctor, and I think
13 that would be reading too much into what it is defense counsel
14 is trying to argue. Clearly, his medical profession is a
15 factor that the Court can consider, but I would not suggest,
16 nor do I think defense counsel is suggesting, that the Court
17 should rely on that fact in granting him bail.

18 Nor do I think defense counsel is correct in
19 suggesting that we are solely relying on the fact that France
20 does not extradite its nationals.

21 In that regard, I have for the court a letter that
22 is from a judicial attaché - if I can approach - to the U.S.
23 Embassy in Paris, France that explains why it is a concern for
24 us and a factor that the Court should consider. It makes
25 clear that the law in France will not extradite its nationals,

1 that the treaty between France and the United States says it
2 would not extradite its nationals, that there's a more recent
3 treaty that suggests that, if the defendant consents, it may
4 extradite its nationals, but in practice that has meant that
5 France has not extradited any of its nationals. And perhaps
6 most renown amongst its nationals that have not been
7 extradited to the United States is Roman Polanski.

8 THE COURT: Okay, so, yeah, that case occurred to
9 me as I was reading Mr. Zornow's letter.

10 MR. QUINONES: So it is - sorry - it is clearly a
11 factor that the court should consider where an individual
12 where an individual who is in that case admitted to having
13 raped someone is still not extradited from France and lives in
14 plain sight in France.

15 THE COURT: But the case also shows I guess that,
16 in effect, someone would be under house arrest in France if
17 they travel to another country, notwithstanding what happened
18 in Switzerland, that did have an extradition treaty, they
19 might well find themselves back here.

20 MR. QUINONES: It may, but, for example, if they go
21 to another country that doesn't have an extradition treaty,
22 like Roman Polanski did with Switzerland, he would not be
23 extradited here.

24 So it clearly lends in favor of risk of flight
25 because it, in effect, this defendant, unlike many other

1 defendants, has the benefit of a safe haven in his home. And
2 that brings me to some of the factors that the court should
3 think about. He's lived in France for the last 35 years.
4 He's resided in France. His wife is in France, his children
5 are in France. His siblings don't reside in the United
6 States. Two sisters live in London; one brother lives in
7 Paris.

8 He has substantial assets. His home is worth
9 approximately \$2 million, and he has checking accounts and an
10 investment portfolio roughly approximately \$100,000. He has
11 nearly \$600,000 in equity in a business. He owns shares in
12 publicly traded companies worth about a million dollars. So,
13 in addition to having a safe haven, he also has the means to
14 flee to that safe haven and to enjoy the comfort of his home
15 rather than face criminal charges in this case.

16 The criminal charges in this case is one of the
17 factors the Court should consider of the nature and
18 circumstances of the offense charged. In this particular
19 case, I think the evidence is substantial. Defense counsel
20 claims it's merely circumstantial. Circumstantial evidence
21 has the same value as direct evidence, and juries in this
22 district convict on circumstantial evidence.

23 I could draw the Court's attention to United States
24 v. McDermott, where the Second Circuit upheld an insider
25 trading case, and I'm quoting, it says, "Although the

1 Government was unable to produce direct evidence of the
2 contents of any conversations during which the defendant
3 transferred material non-public information, we find that
4 rationale minds could infer such a conclusion from the above
5 evidence. Circumstantial evidence is a legitimate form of
6 evidence in this circuit, and in a fact-intensive case such as
7 this requiring careful examination of trading records and
8 myriad of public information, the jury is the appropriate body
9 to determine a defendant's guilt or innocence."

10 The circumstantial evidence in the complaint clearly
11 lays out a pattern of conduct in which the defendant was
12 conveying critical information about the process of a clinical
13 drug trial in he was employed by a publicly held company. He
14 was required by his agreement with that company to keep that
15 information confidential. And although the conversation
16 between this defendant and the hedge fund manager is not
17 recorded on some wiretap or on some recording between them, it
18 is clear by the circumstantial evidence and the timing of that
19 contact, that that contact precipitated trading in the very
20 company at which he worked, and that the hedge fund liquidated
21 its entire position in that company the night before the press
22 release came out disclosing the results of that clinical drug
23 trial with respect to a specific arm. And that the defendant
24 played a critical role not only in the drug trial but in the
25 press release.

1 THE COURT: Assuming that you prevail at trial,
2 what is the guidelines range?

3 MR. QUINONES: The potential penalties under the
4 statute are 25 years, 5 years under the conspiracy count, 20
5 under the securities fraud count; fines up to \$5 million. The
6 guidelines would be, under our calculation, range from 121 to
7 151 months imprisonment based on avoided loss amount of \$30
8 million which is what the hedge fund avoided.

9 So let me turn to his specific - so the case is
10 strong, Your Honor, the potential punishment is high, he has
11 the means to flee, and he has a country that's a safe haven.

12 Now, turning to his specific sort of character and
13 his tie to the community. The Government doesn't dispute that
14 he's a well-known expert in hepatology. In fact, it's that
15 expertise that gave him access to the information. It's that
16 same expertise that caused individuals at the hedge fund and
17 the hedge fund to pay for information from him. So it is that
18 expertise that he wants the Court to consider in realizing
19 him, but it is that same expertise that gave him the ability
20 to exploit the information that he received.

21 THE COURT: You said that the hedge fund paid him.
22 What evidence is there of that?

23 MR. QUINONES: The hedge fund paid a company that
24 paid the defendant to consult with the hedge fund.

25 THE COURT: Okay.

1 MR. QUINONES: And the relationship between them
2 was such that the defendant had an exclusive agreement with
3 this intermediary company, and the hedge fund directly
4 requested to speak to this defendant and paid based on having
5 had conversations with this defendant.

6 In addition to that, there is a reference in the
7 letter to there being no evidence of a benefit and that
8 somehow that being critical to the sort of strength of the
9 case. It's clear under the case law that a gift of
10 information to a friend is sufficient, and in this case the
11 defendants were friends. But aside from that, this defendant
12 also received benefits in the form of having expenses paid
13 for. And he was asked about that in particular during his
14 appearance in France, he was questioned by investigators in
15 France, and in France he admitted that the individual at the
16 hedge fund had essentially expensed car expenses for his
17 daughter when she came to New York.

18 I want to probe that because I think it also relates
19 to part of what defense counsel is arguing in terms of ties to
20 this community. He was shown a copy of an email. On the
21 second page of the email, it says that he requested a
22 chauffeur for his daughter. They asked him about that, and
23 here's his answer:

24 "I made this request because my daughter was
25 going to spend four days in New York and because I

1 was worried about her and for her comfort. I
2 thought it preferable to schedule her roundtrip
3 between the airport and the hotel. I approached the
4 individual at the hedge fund because he is one of
5 the rare people I know in New York."

6 And, again, one of the rare people he knows in New York is
7 significant I think because it shows that his ties to this
8 community are limited.

9 "Second, the individual at the hedge fund took
10 care of making a care available for the days and
11 hours communicated, and he took care of the
12 expenses. I did not reimburse him."

13 So there are instances in which the defendant does receive
14 some benefit. He clearly can gift information to another
15 person. And this case, additionally the defendant had a
16 professional relationship, and in that regard I draw the
17 Court's attention to --

18 THE COURT: Let's assume, for the sake of argument
19 for the case, even if circumstantial is strong, that the
20 defendant has no roots in the community here and that, if he
21 goes to France and doesn't leave France, he's home free. The
22 question really is are any conditions I can set that makes the
23 risk that he will do that a reasonable one to take, right?

24 MR. QUINONES: That is the question --

25 THE COURT: Can we focus on that?

1 MR. QUINONES: And our position is there are no
2 conditions, Your Honor. The conditions of having people
3 cosign on a bond don't assure his appearance. He can clearly
4 flee, and the people will be out of money, and given his
5 assets, he can reimburse them. He would still be safe.

6 There's an argument that defense counsel raises that
7 it would have a collateral consequence on him if he returned
8 to his country. The actual letter --

9 THE COURT: There's a lot of waffle words in there
10 -- might, could, and the like.

11 MR. QUINONES: Exactly right, Your Honor. I think
12 the letter is far from definitive in terms of suggesting that
13 anything actually is going to happen to him. And although the
14 case defendant cites, Bodmer I think it is, makes a reference
15 to that being something that Judge Schindlin considered. In
16 that case, the defendant was a lawyer and a judge. so clearly
17 there's more of a direct relationship between having a license
18 to practice law and committing a crime and fleeing a
19 jurisdiction, even if it's not your own.

20 In this particular case is, I would argue, less of a
21 direct relationship between this event and then providing
22 medical services in your country. The importance of his
23 services doesn't vary based on his ability to sort of adhere
24 to U.S. law or may some disciplinary procedure. It's value is
25 in what he can provide to patients in his country. And it may

1 be that, because it's in a public health system and he works
2 for a public hospital, that they may decide that the benefit
3 of his services outweigh any disciplinary record based on
4 proven conduct in the United States.

5 With respect to home detention or electronic
6 monitoring, I think those also are insufficient. He even
7 suggests he'll buy an apartment, in some respects he'll create
8 a prison outside of prison for himself because he has the
9 resources to do so. I think that creates a dangerous
10 precedent, but, more importantly, I don't think it actually
11 controls his ability to flee.

12 THE COURT: But the reality is rich people end up
13 with different conditions than poor people sometimes.

14 MR. QUINONES: Reality, Your Honor, is that when
15 they do, it's because the court sets them. And I would ask
16 the Court not to set them in this case. And with respect to
17 home detention and electronic monitoring, he can flee, Your
18 Honor. The bracelet can be cut off. We wouldn't know that
19 he's gone, but we wouldn't be able to stop him once he left.

20 He would be in an apartment that they are suggesting
21 would have a family member 24 hours. True, but I can't
22 imagine why they wouldn't both flee together. The notion that
23 somebody that has times abroad is going to come here and
24 remain here to establish ties to the community doesn't add
25 anything, Your Honor, because both of them could flee and

1 neither one of them would be extraditable.

2 So for those reason I think, and I think Your Honor
3 sort of gets the point that I'm making, that despite sort of
4 his value to the medical profession, he's not someone for
5 which there are any conditions we think the Court could set
6 that will reasonably assure his appearance.

7 He does have patients, he does treat individuals,
8 but the services he provides are not unique, and what I mean
9 by not unique, Your Honor, is that he is part of a public
10 health care system that provides the care for patients,
11 whether it's him or another doctor.

12 Second, much of the article and publishing that he
13 does in this particular area is coauthored with other experts
14 in the field. So the world of hepatology is not going to
15 crumble because he's not present. Lastly, I think that even
16 the letters that are provided by the defendant are from
17 individuals that are hepatology experts in France. So the
18 care of those patients could be transferred.

19 Now, there's suggestion that if I had a computer, if
20 I had a phone, I could care for those people. Maybe he could,
21 maybe he couldn't, Your Honor, I'm not an expert in how he
22 could sort of provide telephonic care to people, but what I do
23 know is that if I was a patient, I would want more than
24 telephonic care if I had a critical disease.

25 THE COURT: Thank you. Mr. Zornow.

1 MS. ZORNOW: Your Honor, first of all, let me
2 apologize for a head cold, I'm a little bit congested. But,
3 Your Honor, I think you put your finger on the issue here.
4 The Government's got the burden of demonstrating that there
5 are no conditions that would assure this defendant's presence
6 for this case, and in that connection I think they've failed
7 miserably. And, frankly, it's appalling to me that in a white
8 collar case of this type, dealing with an individual like
9 this, of the character, of the background, of the history, the
10 notion that he would not be able to get bail under the strict
11 conditions that we've set forth is really disturbing.

12 Let me say, Dr. Benhamou is a truly extraordinary
13 human being. He is not just a run-of-the-mill doctor. He is
14 indispensable. He is one of the top clinicians in this area.
15 He is dealing with a population that is seriously ill. Put
16 the articles to the side, put the conferences to the side,
17 this is a man who treats literally hundreds of patients who
18 are seriously, seriously ill. This is a population where it's
19 HIV, it's viral hepatitis --

20 THE COURT: Isn't the argument you're making though
21 sort of a double-edged sword in the sense that it also might
22 give him more of an incentive to return to France and his
23 critically ill patients?

24 MS. ZORNOW: Your Honor, I disagree because what I
25 have come to learn by spending time in prison with Dr.

1 Benhamou over the last ten days is he is very confident that
2 with access to a computer, with the phone, with Skype, which
3 is essentially an ability to communicate face to face with
4 patients, that he can contribute an awful lot. I mean we're
5 talking - let me give you an example.

6 There is a drug that is about to become accessible
7 in France for the first time on an experiment basis, the drug
8 is called telepravir. It's a new drug, and it's going to be
9 tested on patients who are either going to die or have to get
10 a liver transplant. As we know, it's very difficult to come
11 by liver transplants. He is one of a handful of doctors in
12 France who has familiarity and knowledge with respect to this
13 drug. He has been involved in the development of this drug
14 from the beginning.

15 He has 50 patients who are lined up to begin
16 receiving this drug. There will be very sensitive issues
17 about titration, about the use of the drug with other drugs,
18 and there's a constant flow of information. And he assures
19 me, and that's where the character of the man comes in to
20 play, he assures me that he can contribute - obviously, he's
21 not going to be able to do everything he could if he were in
22 France, and we're not asking that he be sent back to France,
23 but what we are saying is it would truly be tragic to have
24 this man with his knowledge sitting in a prison when he could
25 be communicating and helping his patients.

1 I mean let me - you know, these are truly
2 extraordinary letters, Your Honor, and I commend them to you.
3 I ask you to take a look at them. They are not only from
4 doctors in France. They are from doctors literally all over
5 the world. There are doctors in the United States. There's a
6 professor of medicine at Emory University who's prepared to
7 cosign this bond and put his house up, his apartment.

8 But two letters struck me, and they're from
9 patients, and here's one of them from a Mrs. Pauline
10 Gainville:

11 "Dr. Yves Benhamou of PTA Sault Petrie Hospital
12 in Paris is my doctor, and he has been treating me
13 for hepatitis C since my liver operation in July of
14 2005. Thanks to him, his encouragement, his care,
15 I've been able to bear treatment using interferon,
16 Pegasys and Copegus that is very onerous both
17 physically and mentally. He is always available to
18 listen to me. I have another spot on my liver which
19 is stable for the moment thanks to him. Without my
20 doctor, Yves Benhamou, I do not know whether I would
21 continue to seek treatment. I trust only him.
22 Today I am panicking and disheartened. I am praying
23 for him and for me."

24 Another from a Mr. Liani, a letter to the doctor's wife:

25 "Not having had any news of Yves who I've been

1 desperately trying to contact for over week now, I
2 am writing to you now as the silence is damaging my
3 mental and physical health. It won't be news to you
4 who I've interrupted at night and at the weekend the
5 extent to which your husband is indispensable to me.
6 My pains are increasing significantly and to date,
7 and I have not found any other doctor who can treat
8 me like he does."

9 Now, my point is, Your Honor, to rupture that tie
10 between these patients who have been in his care and who trust
11 him would be tragic when we can, and we have offered a
12 combination of conditions that will assure his presence here,
13 and clearly the type of man who will face what he has to face
14 here, but also permit him to contribute. He can get on the
15 phone, he can communicate by email, he can make that
16 transition. It would truly be tragic.

17 Let me - I really want to be helpful to the court,
18 so if there are particular issues that you'd like me to
19 address, I mean I'm prepared to address the strength of the
20 Government's case. I mean, Your Honor, I read the complaint,
21 this is the thin complaint, but I don't think there's any two
22 ways around it, it's purely circumstantial, there's an absence
23 of motive, it's ridiculous. It, frankly, is ridiculous in a
24 manifestation --

25 THE COURT: Well, the absence of motive is - I

1 don't want to tell you how to try the case - but it seems to
2 me is a better argument than strength of the circumstantial
3 evidence because it's not just one phone call. It's more than
4 one communication and some emails that lend credence to what
5 the Government is saying.

6 MS. ZORNOW: Some of them - well, none of those
7 emails, Your Honor, have any content that suggests that on
8 their face that there was a communication of confidential
9 information, and, indeed, the one email that they quote that
10 kind of has substance to it, instead of I'll call you or let's
11 get back and forth, is an email in which he's asking this guy,
12 this fund manager should I buy the stock, which is completely
13 inconsistent with the notion that at the same time he's giving
14 him confidential information that there's something negative
15 going on. Why in the world would he be asking the guy should
16 I buy the stock?

17 What I was going to say, Your Honor, is this notion
18 that the guy who sent a Dial car literally to the airport to
19 pick up Dr. Benhamou's daughter from the airplane and that
20 that somehow presents a corrupt relationship of profit is
21 ridiculous. And the firm that he was working for, under which
22 he was talking to this guy, he was paid a set amount to talk
23 to the guy. There's no allegation here that there was some
24 Swiss bank account or anything like that.

25 Let me just address momentarily the letter that we

1 got from the counsel of state with regard to the jeopardy that
2 his license would be in if he - this is something that we got
3 really at the request of the Government. It's a factor that
4 was cited by Judge Schindlin in the Bodmer case. Nobody like
5 that is going to say it's an automatic disqualification. The
6 point is he's saying it very likely could. So if he were to
7 flee, he would be exposing himself to being revoked as a
8 doctor.

9 Let me also say with regard to the extradition
10 piece, I mean essentially what the Government is arguing for
11 is a revision of the bail statute to say that anytime you're
12 from a country that may not have extradition or may not
13 extradite an individual, you can't get bail. And Judge
14 Schindlin explicitly rejected that in the Bodmer case, and it
15 makes no sense. It's not the law.

16 Your Honor, the focus here should not be on what's
17 going to happen if he flees, is there extradition. The focus
18 should be on aren't their conditions that will assure his
19 presence and reasonably assure his presence. And if you look
20 at the conditions that we've offered, they do that. They do
21 that very effectively, and they're consistent with the kinds
22 of conditions that have been imposed in other cases involving
23 non-U.S. citizens with even fewer contacts to the United
24 States.

25 I mean if you look at the NatWest Enron case, these

1 were three individuals with four extradition for four years
2 from England were finally extradited, they were arguing in the
3 court for the opportunity to go back to England. The
4 Government said you can't do that but agreed to the same sorts
5 of conditions that we're arguing for here, precisely the same
6 conditions. If you look at the Internet Gaming executive who
7 was picked up traversing, you know, changing airplanes in the
8 United States, exact same conditions.

9 I mean the notion that home detention or confinement
10 with electronic monitoring with his family here consistently
11 with cosignors, I mean the cosignors that we have are Dr.
12 Raymond Schnazi who I mentioned a few months ago who is a
13 Professor of Medicine at Emory University who's prepared not
14 only to cosign the million dollar bond but to put up his
15 apartment worth \$300,000. We have two other financially
16 responsible persons.

17 We're not talking about buying an apartment. We've
18 offered two alternatives. One is to rent an apartment, which
19 seems like the most feasible thing to do. The family is
20 absolutely committed to having somebody here continuously.
21 His sister and his brother are here today. They are geared up
22 for this. Dr. Benhamou is completely clear-headed and
23 committed and resigned, in fact, to being in New York for the
24 length of this case. He wants to get out of prison. There is
25 no way in a case like this, white collar case, insider trading

1 case, that he would not be getting bail but for the fact of
2 this extradition thing.

3 And, by the way, on that, I mean we have an opinion,
4 I can hand it up to the Court, from a French law professor
5 saying that extradition is possible from France. It may not
6 have occurred so far, but it is possible. And he has executed
7 a waiver of extradition.

8 THE COURT: Yeah, but the French will say that
9 that's not a voluntary waiver. Take it as a given, I mean you
10 can hand it up and it'll be interesting reading for me, but
11 I'm going to operate on the assumption that effectively there
12 is no extradition for a French national from France.

13 MS. ZORNOW: And I'm not - I kind of see this as a
14 red herring issue, and the reason I raise it now is not so
15 much because of what they will do or they won't do, but the
16 fact of what is his state of mind. He's executed the consent
17 because he is that committed, he is fully committed to being
18 here. He has no intention of leaving.

19 But to get back to the apartment. So they can
20 either rent an apartment or a Professor of Medicine at NYU
21 School of Medicine, Dr. Hillel Tobias, who's the head of their
22 hepatology department, is willing to let him live in his
23 apartment with his wife.

24 So I just don't - I am, frankly, stunned in this
25 case that, given this entire constellation of factors, who

1 this man is, what he could contribute - if one life were
2 saved, wouldn't that be worth it? And conversely, if any of
3 us had a child who had this disease and was in his care,
4 wouldn't we want him to be available by phone or internet or
5 Skype to confer with the doctors and make for transitions and
6 give the benefit of the years of expertise and trust that he's
7 developed?

8 It, frankly, shocks my conscience, and I've visited
9 this man now four times in prison, and it is about the most
10 tragic thing that I have had to do as a lawyer practicing in
11 this area to leave this man cut off from his patients, cut off
12 from any ability to help the world, to sit at the MDC when
13 there are conditions that other courts in similar situations
14 have found to reasonably assure. It's not a guarantee. The
15 law doesn't require a guarantee. The law presumes that there
16 will be bail.

17 THE COURT: Okay, I've heard enough.

18 MS. ZORNOW: Thank you.

19 (Pause in Proceeding)

20 THE COURT: The Bail Reform Act requires me to
21 consider a number of things, including the nature and
22 circumstances of the offense charged, in particular whether it
23 involves terrorism or drugs or firearms, none of which are
24 involved in this case; the weight of the evidence against the
25 person where Mr. Zornow disagrees that it's a strong case, but

1 certainly circumstantial cases are frequently strong cases,
2 sometimes stronger than cases with direct evidence. And as I
3 said, I'm willing to assume that it is a relatively strong but
4 certainly not indefensible case, certainly the ability to take
5 this case to trial, if that's what the defendant chooses to
6 do.

7 I'm also required to consider the history and
8 characteristics of the person, including his physical and
9 mental condition, his family ties, all of which are strong,
10 his employment, financial resources, and the like, and
11 critically length of residence in the community and community
12 ties, both of which are totally or virtually totally lacking
13 except for the fact that he has some friends here and I gather
14 probably comes from time to time for conferences. And
15 obviously danger to the community is not an issue.

16 The issue is, as Mr. Zornow posed it, are there any
17 conditions that can be imposed that creates a reasonable
18 likelihood that he would be here for trial. There are no
19 guarantees in this case.

20 And my conclusion is that there are. I am concerned
21 about aspects of the package that the defendant has proposed
22 because there is an element of what the Government suggested,
23 namely, you know, at a certain point you end up with something
24 being a cost of doing business.

25 What I am going to do is set bail. It's going to be

1 in a larger amount than was proposed. I'm going to fix bail
2 in the amount of a \$3 million personal recognizance bond to be
3 cosigned by three financially responsible persons and to be
4 further secured by \$1 million cash or property. I thought
5 about making it a \$5 million bond, but at a certain point
6 people who believe in the person whose presence they're
7 proposing to help guarantee will shy away, and it seems to me
8 3 million is a more reasonable amount than 5 million, which is
9 why I selected it.

10 Obviously, the defendant's travel would be
11 restricted to the Southern and Eastern Districts of New York,
12 and he's to surrender all travel documents. He'd be subject
13 to Pre-Trial Services supervision, and in part because of the
14 reasons that Mr. Zornow identified, namely, that release on
15 bond would enable him through Skype and other means to
16 continue to assist his patients, something that can easily be
17 done from home.

18 Rather than home detention which would permit him to
19 be out and about during the daytime, I'm going to make it home
20 incarceration, such that he would have to remain in the
21 apartment, indicating that he's to rent a suitable apartment
22 in the New York City area where he will be subject to home
23 incarceration enforced by electronic monitoring. And I
24 further indicated that all of the conditions I've outlined are
25 to be met before his release.

1 So, sir, if you're able to meet these conditions,
2 you'll remain out on bail, but if you thereafter do flee, you
3 could subject yourself in addition to bail jumping charges, a
4 separate criminal offense, and you and whoever cosigns the
5 bond with you will each become liable for the full \$3 million
6 amount of the bond, and whoever posts the million dollars in
7 cash or property will surely lose that cash or property.

8 Do you understand all that, sir?

9 DR. YVES BENHAMOU: Yes, Your Honor.

10 THE COURT: Anything further from the Government?

11 MR. QUINONES: Yes, Your Honor. With respect to
12 the condition that the Court set that the bond be secured by
13 cash or property, we would request that that be property in
14 the United States. We've had some conversations where defense
15 counsel suggested property outside of the United States --

16 THE COURT: Oh, yeah.

17 MR. QUINONES: I just want it to be clear.

18 THE COURT: I'm perfectly happy to make that
19 modification. That's what I had in mind.

20 MR. QUINONES: And then with respect to Pre-Trial
21 supervision, we would request at least twice a week in-person
22 visits or daily phone contact to make sure that he's actually
23 in the jurisdiction. We have some way to determine sort of in
24 an immediate way whether he's --

25 THE COURT: I think you're better off - well, is

1 that necessary if you have an ankle bracelet?

2 PRE-TRIAL SERVICES: If he's on home incarceration
3 with electronic monitoring, we wouldn't want him coming here.

4 THE COURT: Yeah, so -

5 PRE-TRIAL SERVICES: So he stays home, we monitor
6 him 24/7.

7 THE COURT: Yeah, I mean if he, you know -

8 PRE-TRIAL SERVICES: It goes against the idea of
9 home incarceration.

10 THE COURT: I guess it's the TV show the "Good
11 Wife," I mean, you know, a couple of episodes ago, if he goes
12 past the threshold, bells and sirens go off someplace at Pre-
13 Trial Services. And presumably the Government will be
14 notified almost immediately, but it would be worse to say
15 twice a week he can come somewhere, and the phone calls are
16 sort of superfluous given the electronic monitoring.

17 I thought about GPS, but that doesn't work very well
18 in Manhattan, correct?

19 PRE-TRIAL SERVICES: You're right, Your Honor,
20 depending where he's living in Manhattan (inaudible).

21 MR. QUINONES: I think that's it, Your Honor

22 MS. ZORNOW: Your Honor, in view of the discussion
23 that you just had, let me raise an issue, it's something
24 that's been permitted in other cases of home incarceration,
25 and that is the opportunity to visit lawyers, us, and

1 religious services and medical appointments, which we're not
2 anticipating, for himself.

3 THE COURT: Medical appointments I would assume
4 that arrangements can be made through Pre-Trial Services, and
5 I don't want this to become home detention rather than home
6 incarceration. So presumably he'll rent someplace I guess
7 fairly close to your office, and you'll have the inconvenience
8 of going to him rather than the other way around. But I'm
9 willing to take risks but only reasonable risks.

10 MS. ZORNOW: Very well, Your Honor, we will
11 certainly accept that inconvenience and that's fine.

12 MR. QUINONES: There's just one additional thing,
13 Your Honor. I know that defense counsel has mentioned that
14 his client has signed a waiver in extradition. I would just
15 prefer that the Court make it a condition, and we have it as
16 part of the conditions in this case.

17 MS. ZORNOW: Sure.

18 MR. QUINONES: Obviously, it's not something
19 typical to comply with, but we'd prefer it, Your Honor.

20 MS. ZORNOW: We're happy to do it. We've already
21 given Mr. Quinones a copy of it.

22 THE COURT: I would predict it's mostly suitable
23 for framing, but I don't have a problem ordering that.

24 MR. QUINONES: It's (indiscernible) as well, Your
25 Honor.

1 THE COURT: Anything else from anyone?

2 MR. QUINONES: No, Your Honor.

3 MS. ZORNOW: No, Your Honor.

4 THE COURT: Thank you.

5 MR. QUINONES: Thank you, Your Honor.

6 (off the record)

7 (Whereupon the matter is adjourned.)

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C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, United States of America v. Yves Benhamou, Docket #10m2424, was prepared using digital electronic transcription equipment and is a true and accurate record of the proceedings.

Signature _____

CAROLE LUDWIG

Date: November 18, 2010